

IN RE PATENT APPLICATION OF: Danny A. GRANT *et al.*
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EXAMINER: Seokyun Moon
FOR: Methods and Systems for Providing a Virtual Touch Haptic Effect to Handheld Communication Devices

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

REPLY BRIEF

WOMBLE CARLYLE SANDRIDGE & RICE
P.O. Box 7037
Atlanta, GA 30357-0037
Main: 404-872-7000
Direct Dial: 703-394-2274
Fax: 404-888-7490

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I. INTRODUCTION.

This Reply Brief is being filed within two months of the Examiner's Answer (hereinafter "Answer") mailed February 2, 2011. This Brief responds to the new points raised by the Examiner.

II. STATUS OF CLAIMS.

Pending claims 1-16 and 19-30 stand rejected and are on appeal.

The rejection of claims 10-16 and 30 under 35 U.S.C. § 101 have been withdrawn.

Claims 1-4, 10-12 and 19-23 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaaresoja in view of Official Notice and U.S. Patent No. 6,901,273 to Lutnaes ("Lutnaes").

Claims 5-9, 13-16 and 24-30 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2002/0177471 to Kaaresoja *et al.* ("Kaaresoja") and Official Notice.

III. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claims 1-4, 10-12, and 19-23 are patentable under 35 U.S.C. § 103(a) over U.S. Patent Application Publication No. 2002/0177471 by Kaaresoja *et al.* (hereinafter, “Kaaresoja”) in view of Official Notice taken by the Examiner and further in view of U.S. Patent No. 6,901,273 to Lutnaes (hereinafter, “Lutnaes”).
- B. Whether claims 5-9, 13-16, and 24-30 are patentable under 35 U.S.C. § 103(a) over Kaaresoja in view of Official Notice taken by the Examiner regarding alleged common knowledge.

IV. ARGUMENT

Response to Examiner's Arguments

A. Independent claims 1, 10, and 19

Independent claim 1 recites, *inter alia*, “outputting, at the first communication device, a request to initiate a contact with the first user-interface member when the first virtual touch is received and a second request to initiate a contact with the second user-interface member when the second virtual touch is received.” Claims 10 and 19 recite similar features. Thus, the claims clearly recite requests to contact different user-interface members when different virtual touches are received.

The Examiner alleges that Kaaresoja, common knowledge, and Lutnaes teaches or suggests this feature. The Examiner’s argument apparently is based on the premise that a combination of a user-interface member that opens a text message (as allegedly taught by Kaaresoja and common knowledge) combined with the “concept” of including two user-interface members in a mobile phone (as allegedly taught by Lutnaes) teaches or suggests requests to contact different user-interface members when different virtual touches are received. *Examiner’s Answer* at pg. 19, lines 4-16. However, such a leap in logical reasoning fails to provide a reasoned articulation justifying the conclusion of obviousness and instead uses Appellants’ disclosure as a roadmap to arrive at the claimed features.

In particular, the Examiner’s Answer mailed February 2, 2011 (“Examiner’s Answer”) alleges:

the claim limitation does not disclose outputting a request to initiate a contact with **only** (emphasis added) the first user-interface member when the first virtual touch is received and a second request to initiate a contact with **only** (emphasis added) the second user-interface member when the second virtual touch is received...

if the combination of the cited references teaches outputting, at the first communication device, a request to initiate a contact with the first user-interface member and the second user-interface member when the first virtual touch is received and a second request to initiate a contact with the first user-interface member and the second user-interface member when the second virtual touch is received, then the combination of the cited references teaches the above claim limitation.

Examiner's Answer at pg. 18, line 15-pg. 19, line 3.

Thus, the Examiner apparently interprets the claims as reading on a request to contact both a first and a second user-interface member when the first virtual touch is received and a request to contact both a first and a second user-interface member when the second virtual touch is received.

However, even if the Examiner's interpretation is reasonable, which Appellants do not concede, none of the references teach or suggest a request to contact two user-interface members when different text messages are received.

For example, according to the Examiner, Kaaresoja and alleged common knowledge teach a request to initiate a contact with a user-interface member when a text message is received. *Examiner's Answer* at pg. 19, lines 4-8. However, there is simply no teaching or suggestion in Kaaresoja and alleged common knowledge to request contacts with two user-interface members when the text message is received, which the Examiner apparently acknowledges. *Examiner's Answer* at pg. 19, lines 7-8.

The Examiner attempts to cure this deficiency of Kaaresoja and alleged common knowledge by alleging:

Lutnaes teaches the concept of including two user-interface members in a mobile phone. Thus, Kaaresoja as modified by Lutnaes teaches outputting a request to initiate a contact with any of the two user-interface members when the first virtual touch or the second virtual touch is received based on the Examiner's Official Notice.

Examiner's Answer at pg. 19, lines 8-11 (emphasis added).

However, merely the “concept” of including two user-interface members in a mobile phone fails to teach or suggest using the two user-interface members to open a text message. Lutnaes does not even relate to opening text messages, instead relating to power control in a mobile device, let alone teaching use of the two user-interface members to access a text message. *See, Lutnaes* Title. Accordingly, the Examiner has failed to demonstrate even the Examiner’s own hypothetical “if the combination of the cited references teaches outputting, at the first communication device, a request to initiate a contact with the first user-interface member and the second user-interface member when the first virtual touch..., then the combination of the cited references teaches the above claim limitation.” *Examiner's Answer* at pg. 18, line 19-pg. 19, line 3.

Furthermore, the Examiner’s allegation that “Kaaresoja as modified by Lutnaes teaches outputting a request to initiate a contact with any of the two user-interface members when the first virtual touch or the second virtual touch is received based on the Examiner’s Official Notice” fails to address the claims. The claims clearly recite, among other things, a request to contact a first user-interface member when a first virtual touch is received. It is unreasonable to interpret such language to include a request to contact any of the first or second user-interface members when the first virtual touch is received because the claims necessarily require a request to contact the first user-interface member when the first virtual touch is received, not a request to contact the first user-interface member **OR** the second user-interface member.

For at least the foregoing reasons, the Examiner has failed to meet the burden of making a *prima facie* showing of obviousness. As such, Appellants request that the rejection of claims 1, 10, and 19 be reversed.

B. Independent claims 5, 13, and 24

Independent claim 5 recites, *inter alia*, “the virtual touch indicator indicates a particular one of the plurality of user-interface members to be contacted by an operator of the first communication device to receive the virtual touch.” Independent claims 13 and 24 recite similar features.

In the Examiner’s Answer, the Examiner correctly notes that at issue is whether the Official Notice is factually accurate and teaches or suggests a “virtual touch indicator indicates a particular one of the plurality of user-interface members to be contacted.” *Examiner’s Answer* at pg. 19, line 17-pg. 20, line 1. The Examiner equates a text message with the claimed virtual touch indicator and alleges that it is common knowledge that a text message indicates a particular one of the plurality of user-interface members to contact in order to receive the text message. Appellants traverse such Official Notice for reasons reiterated below.

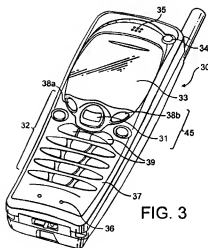
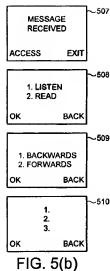
Also in the Examiner’s Answer, the Examiner alleges that Appellants have “neither pointed out the error **specifically** nor stated why the noticed fact is not considered to be common knowledge.” *Examiner’s Answer* at pg. 20, lines 5-6. In response, Appellants note that Appellants’ Appeal Brief at pg. 13, line 19 through pg. 14, line 4, reproduced and reiterated below, indicates the specific error and why the alleged fact is not considered to be common knowledge, thereby rendering the traversal proper.

...contrary to the Examiner's allegation, it is not common knowledge that a text message indicates a particular user-interface member to be contacted. Rather, a text message is generally known as a short message. A device that receives the text message may include its own interfaces and mechanism in which to display a text message. For example, one device may include a dedicated "select" button to open a text message while another device may include a different button such as a dedicated "ok" button to open the text message. Accordingly, the Examiner commits clear error by alleging, without documentary support, that a received text messages indicates a particular one of the user-interface members to be contacted.

Appellants' Appeal Brief at pg. 13, line 19-pg. 14, line 4.

The Examiner also indicates that the Official Notice with respect to the claim feature at issue was "disclosed in the Final Rejection for the first time" and provides U.S. Patent No. 6,708,152 to Kivimaki ("Kivimaki") to support the Examiner's Official Notice. *Examiner's Answer* at pg. 20, lines 9-13. In particular, the Examiner's Answer alleges that the "ACCESS" and "EXIT" texts illustrated in Figure 5(b) of Kivimaki indicate a key pad of the mobile phone to be contacted. *Examiner's Answer* at pg. 20, lines 14-18. Figure 5(b) and related Figure 3 of Kivimaki are reproduced below.

However, contrary to the Examiner's allegation, the "ACCESS" and "EXIT" texts are not indicated by a text message but rather are determined by the mobile phone interface. Thus, Kivimaki contradicts rather than supports the Official Notice, highlighting that the Official Notice is not capable of instant and unquestionable demonstration as being well known that a text message indicates a particular user-interface member to contact to receive the text message.



For example, Kivimaki discloses that “[w]hen a message is received from the communications network via the transceiver 49, the controller sends a control signal to the display driver for the display to present a menu option as shown in stage 507 [of FIG. 5(b)]. If the user wishes to access a message while the handset is in this state, then the left soft key 38a [of FIG. 3] is pressed. Depression of the right soft key [38b of FIG. 3], on the other hand, will exit this menu...” *Kivimaki* at col. 9, lines 11-17.

Thus, the ACCESS and EXIT texts are displayed above buttons 38a and 38b. It is clear that regardless of which message is received, a dedicated button 38a for accessing a message is to be contacted to access the message. Accordingly, Kivimaki illustrates a dedicated button (the soft key 38a) for accessing a message rather than a message indicating which user-interface member to contact to access the message. In other words, Kivimaki illustrates an example of a phone’s own mechanism and interfaces such as a dedicated button to access messages, which was discussed in Appellants’ traversal of the Official Notice. *Appellants’ Appeal Brief* at pg. 13, line 19-pg. 14, line 4.

Accordingly, Kivimaki contradicts the Official Notice and supports Appellants' view that it is not common knowledge that a text message indicates a particular user-interface member to contact to receive a text message. For at least the foregoing reasons, the rejection of the claims based on Kaaresoja and alleged common knowledge fails to teach or suggest all the features of the claimed invention. As such, Appellants respectfully request reversal of the rejections of claims 5, 13, and 24.


CONCLUSION

Appellant now appeals to this Honorable Board to promptly reverse all rejections of claims 1-16 and 19-30 and issue a Decision in favor of Appellant. All of the claims are in condition for allowance.

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Respectfully submitted,

By:


Hean L. Koo
Registration No. 61,214

Customer No. 69490

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P.O. Box 7037
Atlanta, GA 30357-0037
Main: 404-872-7000
Direct Dial: 703-394-2274
Fax: 404-888-7490